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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/702,825	11/01/2000	Cary Lucier	P66053US0	1075

7590

04/25/2005

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EXAMINER

ACKUN, JACOB K

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 04/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/702,825

Applicant(s)

LUCIER, CARY

Examiner

Jacob K. Ackun Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 24 and 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-11, 14-15 and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Fabre (cited by the applicant). Fabre discloses a set of elements (such as element 10 in Fig. 1) having all of the structural elements of the claims, such as those recited on lines 3-6 of claim 1, for example. Since the devices of Fabre have all of the claimed structure, they are presumed to be inherently capable of all of the claimed functions, such as those recited in lines 7-14 of claim 1, for example.
3. Claims 12, 13, 16, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fabre. Fabre discloses most of the elements of the claims (as indicated above with respect to claims from which claims 12, 13, 16, 17 and 20 depend), but does not teach the specific limitations of these claims. On the other hand, it would have been obvious to construct the devices of Fabre as claimed, for the purpose of facilitating easier use thereof.
4. Claims 1-12 and 14-15 are rejected under 35 U.S.C. 102(b) or (e) as being anticipated by Wolfe (5,788,233). Wolfe discloses building blocks which appear to be "non-interengageable" in the sense applicant is presumed to interpret the limitation. The blocks of Wolfe are also considered to be inherently capable of use as recited in the claims (note claim 1 last two paragraphs, for example), since they possess all of the claimed structural elements. The blocks are for building structures that are considered to be easily assembled and disassembled. The blocks shown in figs 3 and 5 comprise a set of flat structures, as required in the claims.
5. Claims 13 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfe. Wolfe discloses most of the elements of the claims, but may not disclose designs

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comprising words or images on the toy elements or the specific shapes of the protrusions recited in the claims. On the other hand the missing elements are conventional in the relevant art (note for example some of the prior art of record). It would have been obvious to one having ordinary skill in the art to provide the device of Wolfe with the noted missing elements for the purpose of rendering the elements more attractive and easier to construct and use.

6. Applicant's arguments filed on 06/14/2004 have been fully considered but they are not persuasive. The applicant argues that the examiner has not shown or demonstrated how the claims read on the prior art of record. These arguments are not well taken. As indicated herein and previously, all that is structurally claimed is a flat element having protrusions thereon. The applied prior art is believed to clearly show that such structures are conventional. As also previously explained, the examiner construes the limitations in the claims not directed to structure to be functional or to be statements of intended use with regard to the claimed structure. Furthermore, the examiner considers that since the prior art has all of the structural elements of the claims (flat elements having protrusions thereon) the prior art structures are inherently capable of the claimed functions or of use as recited in the statements of intended uses in the claims. Nothing more is required of the examiner.

On the other hand the applicant has not stated precisely why the applicant believes the structures of the applied prior art could not be used in the manner claimed. The fact that the prior art teaches different uses clearly does not prevent uses of the prior art structures as claimed. Why, for example, would the prior art flat structures of Wolfe and Fabre be incapable of being leaned against each other and prevented from sliding in the manner recited in claim 1?

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7. Claims 24 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob K. Ackun Jr. whose telephone number is (571)272-4418. The examiner can normally be reached on Monday through Friday 8.30AM-5.00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on (571)272-4485. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jacob K. Ackun Jr.
Primary Examiner
Art Unit 3723

J.A.